

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

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AUG 05 2009

Attorney Docket No.: **Juniper-11 (JNP-0105)**

Appl. No.: **09/885,485**

Confirmation No.: **4428**

Applicants: **Kaushik GHOSH, et al.**

Filed: **June 20, 2001**

Title: **GENERATING PATH CENTRIC TRAFFIC INFORMATION FOR
ANALYSIS USING AN ASSOCIATION OF PACKET CENTRIC
INFORMATION TO PATH CENTRIC INFORMATION**

TC/A.U.: **2155**

Examiner: **Bharat Barot**

Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 C.F.R. § 1.137(a)**

Sir:

In response to the Notice of Abandonment mailed on
July 20, 2009 (Paper No. 20071120), please revive the
above-referenced application in view of the following.

Remarks/Arguments begin on page 2 of this paper.

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REMARKS/ARGUMENTS

The above-identified application became abandoned in view of "The decision by the Board of Patent Appeals and Interference rendered on 12 July 2007 and because the period for seeking court review of the decision has expired and there are no allowed claims." (Notice of Abandonment, Paper No. 20071120, mailed on July 20, 2009.)

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

1. *Petition fee*

The Office is authorized to charge the petition fee of \$ 540.00 (37 C.F.R. § 1.17(1)), and any fee due in order to revive this application, to the deposit account of Straub & Pokotylo, deposit account number 50-1049. Since, however, this application was improperly abandoned due to an error by the U.S. Patent & Trademark Office ("US PTO"), the applicants respectfully submit that the Notice of Abandonment should be vacated and that any fees for this petition should be waived.

2. *Reply and/or fee*

A reply and/or fee to the above-noted decision by the Board of Patent Appeals and Interference ("BPAI") rendered on 12 July 2007 in the form of an amendment with reply is not believed to be necessary for the reasons discussed in § 4 below. If, however, such a response is necessary, an amendment is enclosed herewith.

3. Terminal disclaimer with disclaimer fee

Since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required. However, the applicants respectfully request an appropriate patent extension due to delays caused by the errors and inaction by the US PTO discussed in § 4 below.

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is provided below.

The applicants received the Notice of Abandonment, mailed on July 20, 2009, on July 22, 2009. The undersigned prepared this petition without undue delay. Furthermore, the applicants were not required to provide a reply to the BPAI Decision for reasons discussed below.

In its decision dated July 12, 2007, the BPAI affirmed the anticipation rejection of claims 1-3, 15, 25 and 32-34, **reversed the anticipation rejection of claims 16, 17, 19, 20 and 31, and reversed the obviousness rejection of claims 4 and 5.** In accordance with MPEP 1214.06 (I)(B), the Examiner should have either:

(1) converted dependent claims (4, 6, 16-20, 26, 30 and 31) into independent form by Examiner's Amendment, cancel all claims in which the rejection was affirmed, and issue the application; or

(2) set a 1-month time limit in which appellant may rewrite the dependent claim(s) in independent form,

because the BPAI affirmed a rejection against independent claim 1 and reversed all rejections against a claim dependent thereon (namely, claims 4, 5, 16, 17, 19 and 20), because the BPAI affirmed a rejection against independent claim 25 and reversed all rejections against a claim dependent thereon (namely, claim 31) and because the period for further appeal expired. (See, MPEP 1214.06 (I)(B).)

Thus, under the clear and unambiguous guidance of the MPEP, the US PTO, not the applicants, was under an obligation to reply to the BPAI decision.

When no communication was received from the US PTO, the undersigned left a voice message with Examiner Barot on November 30, 2007. **This call was not returned.** The undersigned again called and finally discussed the status of this application with Examiner Barot on January 9, 2008 and explained that the Examiner should have proceeded (and should proceed) in accordance with MPEP 1214.06 (I)(B). The Examiner's position was that this application should have been abandoned. The undersigned disagreed. When **nothing further was received from the USPTO**, the undersigned left a voice message with Examiner Barot on March 13, 2008. **This message was not returned.**

When nothing further was received from the USPTO, the undersigned filed a Formal Status Inquiry Request on May 20, 2008, followed by Second and Third Formal Status

Inquiries on January 6, 2009 and April 17, 2009, respectively.

When *still nothing was received from the USPTO*, on May 28, 2009, the undersigned telephoned SPE Najjar requesting the status of this application. SPE Najjar indicated that this application was abandoned in November 2007 and that a Notice of Abandonment was mailed. The undersigned informed SPE Najjar that the undersigned (and the Office of Straub & Pokotylo) did not receive a Notice of Abandonment in this application, and noted that such a Notice of Abandonment was not listed in Private PAIRS. SPE Najjar agreed, but noted that it was in the PALM system of the USPTO.

Immediately following his conversation with SPE Najjar, the undersigned checked the mail log of Straub & Pokotylo (which includes a listing of all incoming mailed correspondence) for the months of November 2007 and December 2007, and confirmed that the office of Straub & Pokotylo had no record of having received the alleged Notice of Abandonment. The undersigned called SPE Najjar back and requested that the USPTO mail, or preferably fax, a copy of the missing Notice of Abandonment as it was never received and no copy was available on PAIRS. SPE Najjar indicated that the USPTO would send a copy.

Not having heard nor received anything since my May 28, 2009 discussions with SPE Najjar, the undersigned again telephoned him on July 10, 2009 and left a voice message that we still haven't received the alleged Notice of Abandonment and that the undersigned wanted this

resolved within a week as both the undersigned and the applicants are frustrated with the delays in this matter. When the undersigned still did not receive a response (not a telephone call, fax, or letter), the undersigned wrote to Director Andrew Hirshfeld (Group 2150/2160) on July 17, 2009 to request his assistance.

Subsequently, the US PTO issued a Notice of Abandonment on July 20, 2009.

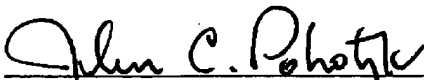
5. Relief Sought

Since the Notice of Abandonment was erroneous, the applicants request that (1) the Notice be vacated, (2) the fee for this petition be waived, (3) the Examiner be directed to send a prompt and appropriate response in accordance with MPEP 1214.06 (I)(B), and (4) the term of this patent be extended for a period corresponding to the time from the 2 months following the Board decision to the decision on this petition (or such time as appropriate).

In the alternative, the applicants request that this petition be granted and any of the other relief sought be provided, as appropriate.

Respectfully submitted,

August 5, 2009


John C. Pokotylo, Attorney
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (and any accompanying paper(s)) is being facsimile transmitted to the United States Patent Office on the date shown below.

John C. Pokotylo

Type or print name of person signing certification

John C. Pokotylo
Signature

August 5, 2009

Date